

AG Contract No. KR03-0397TRN  
ECS JPA File No. 02-204  
Project: TEA-CWD -0(004)A  
TRACS No.: SL508 01D, 01C  
Item Number: 75603  
Section: Cottonwood Old Town Phase III

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF COTTONWOOD

THIS AGREEMENT is entered into 30 July, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY, acting by and through its MAYOR, and CITY COUNCIL the ("City")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 9-240 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Such project within the boundary of the City has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

4. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

5. The State and City desire to participate in the design construction and maintenance for the improvements to a portion of Historic 89A which includes resurfacing, widening of sidewalks, curb replacements, placement of street furniture and new streetlights (old fashion-style) and substantial landscaping, hereinafter referred to as the "Project", for the benefit of the traveling public. The parties hereto agree that the State's interest is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

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NO. 26204  
Filed with the Secretary of State  
Date Filed: 07/30/03

Janice K. Brewer  
Secretary of State

By: Vincent Haeseveld

**Design TRACS No. SL508 01D**

Estimated Federal Aid Funds @ 94.3%	\$ 61,000.00
Estimated City of Cottonwood Funds @ 5.7%	\$ 3,477.00

**Construction TRACS No. SL50801C**

Estimated Federal Aid Funds @ 94.3%	\$439,000.00
Estimated City of Cottonwood Funds @ 5.7%	<u>\$ 25,023.00</u>

**\*Total Estimated Cost of the Project** **\$528,500.00**

\*(includes construction engineering at 15% and change orders at 5%)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

## 1. The State will:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, the City will and does hereby designate the State as authorized agent for the City, and with the aid and consent of the City and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the City, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions. The State will enter into a project agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the authorized federal funds available, including construction engineering and administration costs.

## 2. The City will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve State review comments.

b. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement. Such changes require the prior approval of the State.

c. Prior to the solicitation of bids, deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

d. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area and hereby certifies that all obstructions and encroachments have been or will be removed there from prior to the start of construction.

e. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right-of-way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

f. Furnish all water for landscape installation during the construction phase, a point of connection (POC) for the irrigation system, and all water thereafter necessary to properly maintain the landscape, all at the City's expense. The City will also provide an electrical (POC) to the project area for the purpose of providing power to the pedestrian lighting.

g. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of all landscape improvements, including, but not limited to landscaping, the irrigation system, pay for irrigation system electric, including all testing, adjusting, repairing and operation of the irrigation system, and shall furnish all electrical power necessary to operate the irrigation system and pedestrian lighting. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the project. The City will also be required to maintain the pathway and keep it free of debris.

h. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the City will bear all costs associated therewith.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

City of Cottonwood  
Manager  
827 North Main Street  
Cottonwood, AZ 86326

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

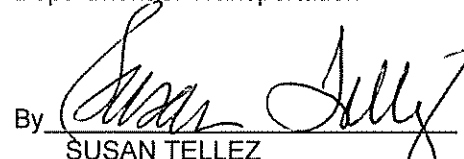
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF COTTONWOOD, ARIZONA**

**STATE OF ARIZONA**

Department of Transportation

By   
RUBEN JAUREGUI  
Mayor

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By   
MARIANNE JIMENEZ  
City Clerk

RESOLUTION NUMBER 1998

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE DESIGN AND CONSTRUCTION OF THE COTTONWOOD OLD TOWN STREETSCAPE PROJECT--PHASE III.

WHEREAS, the State is empowered by A.R.S. § 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State; and

WHEREAS, the City is empowered by A.R.S. § 9-240 to enter into this agreement; and

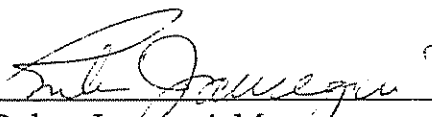
WHEREAS, the City and State desire to participate in the design construction and maintenance for the improvements to a portion of Historic 89A, which includes resurfacing, widening of sidewalks, curb replacements, placement of street furniture and new streetlights (old fashion-style) and substantial landscaping; and

WHEREAS, the parties hereto agree that the State's interest is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA:

THAT, the Intergovernmental Agreement between the State of Arizona Department of Transportation and the City of Cottonwood is hereby approved.

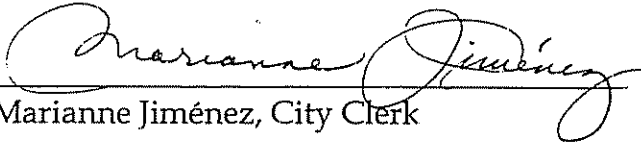
PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 1ST DAY OF JULY, 2003.

  
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Ruben Jauregui, Mayor


RESOLUTION NUMBER 1998

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ATTEST:

  
Marianne Jiménez, City Clerk

APPROVED AS TO FORM:

  
Melinda Garrahan  
Mangum, Wall, Stoops & Warden, P.L.L.C.  
City Attorneys

APPROVAL OF THE CITY OF COTTONWOOD ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and COTTONWOOD, declare this agreement to in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

Approved To As Form:

  
Mamgun Walls, Stoops & Warden PLLC , City Attorney

6/19/03  
DATE



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

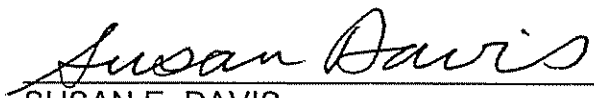
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-0397TRN (JPA 02-204), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED July 23, 2003

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:ss

att.